

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11mc001**

IN RE:	REFERRAL OF CERTAIN)	
	MATTERS TO MAGISTRATE)	
	JUDGES.)	STANDING ORDER
_____)	

THIS MATTER is before the court on its own motion regarding the referral of motions and other duties (“reference of duties”) in accordance with 28, United States Code, Section 636, to United States Magistrate Judges serving in the Western District of North Carolina (“magistrate judges”), either by commission or designation.

IT IS, THEREFORE, ORDERED as follows:

- (1) **Previous Order Stricken:** the previous Order concerning reference of duties, 3:07mc157, is **STRICKEN** and this Order is entered in substitution thereof;
- (2) **Non-Exclusive Reference of Specific Motions and Proceedings to Magistrate Judges:**
 - (A) **Motions and Proceedings in Civil Cases:**
 - (1) **Pretrial Proceedings:** magistrate judges shall preside over any Initial Pretrial Conference, set all deadlines and limitations on discovery contemplated the Federal Rules of Civil Procedure, enter Case Management

Orders and amendments thereto, and otherwise direct and supervise discovery to the fullest extent, as provided in Local Civil Rule 16.1;

(2) **Non-Dispositive Motions:** magistrate judges shall dispose of all non-dispositive pretrial motions pertaining to discovery and any other matter, including but not limited to: L.Civ.R. 83.1(D) motions for admission of counsel; motions for withdrawal of counsel; Rule 4 motions to enlarge time for service; Rule 6 motions for extension of time and to reopen time; Rule 12 motions to strike less than a claim; motions to transfer to another district or division; Rule 14 motions to sever or try separately; Rule 15 motions to amend and supplement; motions to stay litigation (except motions to stay related to arbitration); motions concerning the conduct, scope, or enlargement of time for discovery; motions pursuant to Rules 18,19, and 20 concerning joinder of claims and parties; Rule 21 motions concerning misjoinder; Rule 17 and 25 motions concerning substitution of real party in interest; Rule 45 motions to quash; motions for discovery sanctions, fees, or costs; motions to reconsider (if for reconsideration of a non-dispositive motion); motions to compel; motions to seal; requests for international judicial assistance under 28 U.S.C. 1782(a); motions to proceed *in forma pauperis* in all non-prisoner cases and in prisoner cases where the prisoner is represented by counsel; non-dispositive motions

in actions pursuant to the Hague Convention on Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act (International Child Abduction Actions); non-dispositive motions in Section 2254 cases where the petitioner is represented by counsel (except death penalty cases); all non-dispositive motions in Social Security cases; and enter orders involving any post-judgment execution proceedings;

(3) **Dispositive Motions:** magistrate judges shall consider and enter recommendations as to the disposition of: motions to dismiss (except Rule 41(B)); motions for judgment on the pleadings; motions to strike claims or defenses; motions to “dismiss and/or change venue”; Rule 19 motions to dismiss based on failure to join a party; dispositive motions in International Child Abduction Actions; dispositive motions in Section 2254 cases where the petitioner is represented by counsel (except death penalty cases); and all dispositive motions in Social Security cases, including summary judgment motions;

(4) **Motions Not Referred:** magistrate judges shall not be referred the following motions, which are specifically reserved for consideration and disposition by the undersigned, except where otherwise instructed: motions for regular admission of counsel; motions to remand;

motions to compel arbitration (including motions to stay when combined with a motion to compel arbitration); motions for injunctive relief; motions for entry of default (which are to be disposed of by the Clerk); motions for entry of default judgment; Rule 11 motions for sanctions; Rule 12(c) motions for judgment on the pleadings; Rule 22 motions concerning interpleader or statutory interpleader that seek injunctive or *ex parte* relief; Rule 23 motions concerning certification of a class and/or appointment of class counsel; Rule 41(b) motions to dismiss for failure to prosecute, participate in discovery, or obey a Court order; Rule 56 motions for summary judgment; motions for summary judgment in contract ERISA cases (i.e. cases including claims under both ERISA and pursuant to private contract); motions for extension of time as to the briefing of summary judgment or for judgment on the pleadings; motions *in limine*; motions to continue trial; *Daubert* motions; motions seeking court approval of a minor settlement or a settlement under the FLSA; Rule 50 motions for judgment as a matter of law or alternative motions for a new trial; Rule 54 motions for costs; Rule 59 motions for new trial or to alter or amend a judgment; Rule 60 motions for relief from judgment or an order entered by the undersigned; and motions to continue a case from a trial calendar once the trial calendar has been published.

(5) **Duties Referred:** magistrate judges shall enter Orders of stay upon the filing of a Notice of Bankruptcy and enter Rule 4(m) notices.

(6) **Cases Not Referred:** magistrate judges shall not be referred the following cases (or motions therein), which are specifically reserved for consideration and disposition by the undersigned, except where otherwise instructed: bankruptcy appeals; patent cases; trademark cases; Section 2255 proceedings; Section 2254 death penalty proceedings; *pro se* Section 2254 cases;

(7) **Supervision of Juries:** magistrate judges shall take the verdict, when required, from juries and provide such jurors with appropriate instructions;

(8) **Stipulation to the Jurisdiction of the Magistrate Judge.** In cases where the parties have stipulated to the jurisdiction of the Magistrate Judge to hear the entire case, then the Magistrate Judge shall be referred the entire matter pursuant to 28 U.S.C. §636 and any appeal therefrom shall be to the Circuit Court, and the undersigned shall have no further involvement therein.

(B) **Motions and Proceedings in Criminal Cases:**

(1) **Pretrial Proceedings:** magistrate judges shall preside over

all preliminary proceedings, determine all non-dispositive pretrial motions to the fullest extent allowed by the United States Code and the Federal Rules of Criminal Procedure, and otherwise direct and supervise discovery and all pretrial proceedings to the fullest extent as provided in Local Criminal Rule 57.1 and as contemplated by the Constitution and laws of the United States;

(2) **Acceptance of Pleas and the Conduct of Trials in Misdemeanor Matters:** magistrate judges shall accept guilty pleas and conduct trials on misdemeanor offenses for which the maximum term of imprisonment is one year or less, if the defendant has consented to proceed before a magistrate judge and if such consent is necessary under 28 U.S.C. §636 or 18 U.S.C. §3401;

(3) **Non-Dispositive Motions:** magistrate judges shall dispose of all pretrial non-dispositive matters, including but not limited to: motions for special or *pro hac vice* admission of counsel; motions for withdrawal of counsel; motions seeking new counsel; motions pertaining to bond, appointment of counsel, detention, and discovery; motions seeking the appointment of experts and investigators; motions for preliminary hearings; motions for psychiatric evaluations; motions seeking determination of competency or hospitalization of an incompetent person (including periodic

review of persons found not competent; motions for reciprocal discovery; Rule 17 motions for the issuance of subpoenas at government expense; motions seeking approval of out-of-district travel; motions seeking temporary custody orders; motions to reconsider; motions to revoke bond; pretrial motions to forfeit bond or bail; Rule 44(c) motions concerning joint representation; motions for preliminary orders of forfeiture; motions for issuance of writs of garnishment; motions to strike writs of garnishment; and Rule 46(g) motions for exoneration of sureties and release of bonds and bail;

(4) **Dispositive Motions:** magistrate judges shall consider and enter recommendations as to the disposition of the following dispositive motions, including but not limited to: pretrial motions to dismiss filed by a defendant; and pretrial motions to suppress;

(5) **Acceptance of Pleas in Felony Matters:** magistrate judges shall conduct proceedings in accordance with Rule 11 and either decline or accept any plea tendered and, if the plea is accepted, determine under 18 U.S.C. § 3143 whether the defendant should be released or detained pending sentencing, including determining whether exceptional circumstances exist under Section 3145(c);

(6) **Supervision of Juries:** magistrate judges shall regularly

take returns from grand juries and, when required, from *petit* juries. Magistrate judges may instruct such juries as required; and shall conduct the swearing in of grand jurors;

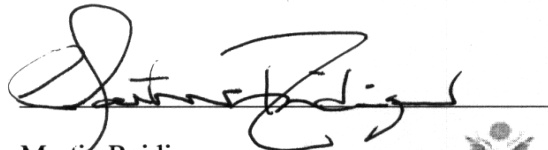
(7) **Motions Not Referred:** magistrate judges shall not be referred the following motions, which are specifically reserved for consideration and disposition by the undersigned, except where otherwise instructed: motions for regular admission of counsel; motions to sever counts or defendants; motions *in limine*; *Daubert* motions; Rule 12 motions to dismiss filed during or after trial or after acceptance of a plea; Rule 29 motions for acquittal; Rule 33 Motions for a new trial; Rule 34 motions to arrest judgment; Rule 35 motions to correct or reduce a sentence; Rule 38 motions to stay a sentence; Rule 41(g) motions for return of seized property; Rule 46(g) motions concerning the forfeiture of bond or bail; Rule 48 motions filed by the government; and Section 2255 motions to vacate or set aside judgment;

(8) **Impact of Publication of Notice of Trial:** upon publication of notice of trial for a matter, all trial-related motions (such as motions for issuance of subpoenas, motions to continue the trial and motions *in limine*) shall be directed to the undersigned for disposition, but that any motions not relating to the conduct of the trial (such as review of the terms of the

defendant's bond) shall continue to be referred.

(C) Referral of Specific Matters: The undersigned retains the option to refer any motion or matter to a magistrate judge for purposes of conducting a hearing and/or for entry of an appropriate order or recommendation on a case-by-case basis. The referral of a specific motion or matter not contemplated by this Order or in a manner not consistent with this Order will be communicated to the Clerk of Court and the parties by a separate Order of Reference, therein authorizing the Magistrate Judge to take appropriate action.

Signed: January 19, 2011


Martin Reidinger
United States District Judge

